



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Denver, CO 80202-1129  
Phone 800-227-8917  
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OCT 04 2018

Ref: 8ORC

*This letter contains information claimed as Confidential Business Information (CBI) and should be handled in accordance with appropriate CBI procedures.*

*By certified mail, return receipt requested*

Michelle DeVoe  
Davis Graham & Stubbs LLP  
1550 17th Street, Suite 500  
Denver, CO 80202

Re: Nelson Tunnel Superfund Site, Creede, Colorado; Final Determination Concerning  
Confidentiality – Additional Required Information

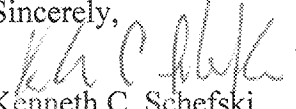
Dear Ms. DeVoe:

I am writing to follow up on the letter I sent you on October 3, 2018, in which I informed you of my determination that certain information you have claimed as confidential is not entitled to protection from disclosure under Exemption 4 of the FOIA. Environmental Protection Agency (EPA) regulations governing these determinations specify that recipients should be informed of several points related to judicial review. 40 C.F.R. § 2.205(f)(2). Some of that information was inadvertently omitted from the October 3 letter; accordingly, I am providing it below:

As noted in the October 3 letter, the determination constitutes final agency action concerning the described business confidentiality claim, and may be subject to judicial review under Chapter 7 of Title 5, United States Code. In addition, EPA may make the information publicly available on or after the tenth working day after the date of your receipt of this notice, unless the EPA Office of Regional Counsel has first been notified of your commencement of an action in Federal court (1) to obtain judicial review of this determination and (2) to obtain preliminary injunctive relief against disclosure. Even if you have commenced an action in federal court, EPA may make this information available to the public if the court refuses to issue a preliminary injunction or upholds this determination. EPA may also make this information available to the public, after reasonable notice to you, if it appears to the Agency that you are not taking appropriate measures to obtain a speedy resolution of the action.

A copy of the October 3 letter is enclosed for your reference. If you have any questions about this matter, please call Mai Denawa, Associate Regional Counsel, at 303-312-6514.

Sincerely,

  
Kenneth C. Schefski  
Regional Counsel

cc: Erin Agee, Legal Enforcement Program

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